

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

JERRY L. GENT,  
Plaintiff-Appellant.

v.

No. 95-3006

THE DEPARTMENT FOR RIGHTS OF  
VIRGINIANS WITH DISABILITIES,  
Defendant-Appellee.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Richmond.  
James R. Spencer, District Judge.  
(MISC-95-14)

Submitted: April 9, 1996

Decided: April 22, 1996

Before HAMILTON and MOTZ, Circuit Judges, and CHAPMAN,  
Senior Circuit Judge.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Jerry L. Gent, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## OPINION

### PER CURIAM:

Jerry L. Gent appeals the district court's order denying his petition to proceed in forma pauperis. We vacate and remand with instructions.

Leave to proceed in forma pauperis should be freely granted under 28 U.S.C. § 1915(a) (1988). Cruz v. Hauck, 404 U.S. 59 (1971) (Douglas, J., concurring). The proper procedure is for the district court to consider only a petitioner's economic status in making the decision whether to file a pro se complaint in forma pauperis. Boyce v. Alizaduh, 595 F.2d 948, 950-51 (4th Cir. 1979). Once filed, the complaint may be dismissed under 28 U.S.C. § 1915(d) (1988), if the complaint is patently frivolous or malicious.

Here, the district court made no explicit findings with regard to whether Gent satisfied the poverty requirement to proceed in forma pauperis and denied the petition based upon consideration of the merits of Gent's complaint. Upon review, however, Gent's declaration in support of his petition to proceed in forma pauperis would support a finding of indigency because it disclosed that he was not employed, received only \$552 per month from Social Security Disability Insurance, and owned no cash, stocks, or bonds. We are not able to review the court's determination that the complaint was frivolous based on the current record because the district court did not file Gent's complaint. Therefore, we find that the district court abused its discretion.

Accordingly, we grant leave to proceed in forma pauperis on appeal and vacate the district court's order. Upon remand, the district court should grant Gent's petition to proceed in forma pauperis and file the complaint. Once the district court has docketed the complaint, it has broad discretion to dismiss it for frivolity under § 1915(d). Adams v. Rice, 40 F.3d 72 (4th Cir. 1994), cert. denied, \_\_\_ U.S. \_\_\_, 63 U.S.L.W. 3690 (U.S. Mar. 20, 1995) (No. 94-7733). We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED